

Suzy Curtains, Inc. and Lorraine Home Fashions of China and Charlotte Curtains, Inc., successor to Suzy Curtains, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Cases 11-CA-14596 and 11-CA-14706

May 6, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On charges filed by the Union on August 28¹ and October 25, 1991,² the General Counsel of the National Labor Relations Board issued a consolidated complaint on December 31, 1991, against the Respondents, Suzy Curtains, Inc. (Curtains), Lorraine Home Fashions of China (Fashions), and Charlotte Curtains, Inc. (Charlotte), alleging that the Respondents had violated Section 8(a)(5), (3), and (1) of the Act in numerous respects. The Respondents filed an answer to the consolidated complaint.

On March 8, 1993, the General Counsel filed a motion to transfer proceeding to the Board, with exhibits attached. In the motion, the General Counsel states that about November 9, 1992, Respondents Curtains and Charlotte entered into a partial settlement agreement with the Union which would dispose of all unfair labor practice allegations in the consolidated complaint pertaining to those two Respondents. Fashions was not a party to the settlement agreement. However, according to the motion, all the Respondents and the Union agreed through a stipulation that, unless a settlement was arrived at, on the issuance of the Board's Decision and Order in Cases 11-CA-13913, 11-CA-13980, 11-CA-14114, and 11-CA-14219, the complaint allegations and facts concerning Fashions would be submitted directly to the Board for resolution. A copy of the stipulation is attached to the motion as an exhibit. The Board issued its Decision and Order in the cases just mentioned on December 16, 1992.³ On March 3, 1993, the Regional Director for Region 11 approved the partial settlement agreement.

All parties have agreed that the stipulation, charges, complaint, consolidated complaint, answer, and amended answer constitute the entire record in these cases, and that no oral testimony is necessary or desired by any party. The parties also waive a hearing before an administrative law judge and the issuance of a judge's

decision, and agree to submit the complaint allegations pertaining to Fashions to the Board for findings of fact, conclusions of law, and an order directed by the Board. Further, in view of the partial settlement agreement between the Union and Respondents Curtains and Charlotte, the Union, through the stipulation, waives all other rights and claims it may have against those two respondents that might arise from the Board's disposal of the allegations concerning Fashions in the captioned cases.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has duly considered the matter and has decided to reject the stipulation and to deny the General Counsel's motion to transfer proceedings to the Board.

We base our decision on paragraph 20 of the stipulation, which states that "The parties reserve the right to present additional facts by stipulation or otherwise to the Board regarding the status of said parties in this case." That statement indicates that, contrary to paragraph 2 of the stipulation, the stipulation, exhibits, and enumerated pleadings may *not* constitute the entire record in the case. Instead, further information may be presented to the Board "regarding the status of the parties."⁴ Indeed, paragraph 20 even suggests that information may be presented other than by stipulation, thus indicating that some party may adduce facts that the other parties dispute. It is unclear what the Board's appropriate response would be in such a situation, given that stipulated cases are meant to be decided on the basis of facts to which the parties all agree, yet the parties in this case appear to have left themselves in the position of allowing each other to present *disputed* facts to the Board. We cannot approve such an approach. We think that when parties wish to present a case to the Board on a stipulated record, they should wait to submit their stipulation until they can agree on the entire record on which they wish the Board to make its decision. When that has been done, the Board will know that it has all the information the parties desire to present, and can proceed to decide the case. Under the approach taken by the parties here, if the Board were to accept the stipulation, it still would not know when to begin its deliberations, because it could not be sure that other pertinent facts would not be adduced at some time in the future.

¹ The charge was amended on November 23, 1992.

² The charge was amended on November 13 and December 9, 1991, and on November 23, 1992.

³ *Suzy Curtains*, 309 NLRB 1287.

⁴ On March 22, 1993, Fashions filed a motion in support of and clarification of the General Counsel's motion. In its motion, Fashions expressly reserved its right under the stipulation to present additional evidence.

If the parties here wish the Board to decide these cases pursuant to a stipulation, they should first agree among themselves as to the *entire* record they wish to present to the Board, and stipulate to the facts making up that record once and for all.⁵ This they have not done and therefore we do not accept their stipulation.⁶

⁵We do not mean that parties that have entered into a stipulation may never seek to present (by stipulation) additional facts later on if newly discovered relevant evidence comes to light. Our disapproval of the parties' approach in this case is based on their attempt to present the Board with an open-ended stipulation which the

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The stipulation is rejected, and the General Counsel's motion to transfer proceeding to the Board is denied.

parties reserve the right to modify without limit, and perhaps even unilaterally.

⁶We call the parties' attention to the fact that, although the stipulation refers to the answer and the amended answer, the exhibits contain nothing styled an "amended answer," and the only answer to the consolidated complaint found among the exhibits is that of Charlotte.